

FEB 04 2014

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: MILLARD ELSTON III and THE EARTHMAN, L.C. Jefferson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2014-AQ- 04 NO. 2014-SW- 01
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TO: Millard Elston III
Earthman, L.C.
1777 190th Street
Fairfield, Iowa 52556

William Scales
Whitfield & Eddy, P.L.C.
317 Sixth Ave. Suite 1200
Des Moines, Iowa 50309-4195

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Millard Elston III and The Earthman, L.C. for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition of trailers and the burning and disposal of associated solid waste from the Horseshoe Court Trailer Park in Fairfield, Iowa on rural property near Richland, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Jim Kacer, Field Office #6
Iowa Department of Natural Resources
1023 West Madison
Washington, IA 52353
Phone : 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/725-9572

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure

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compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Horseshoe Court Trailer Park (Trailer Park) is located at 100 North 16th Street in Fairfield, Iowa, and is currently owned by The Earthman L.C., whose registered agent is Millard Elston III. At the time of the violations contained herein, Mobile Management, LLC owned the Trailer Park, and the Trailer Park was being sold on contract to The Earthman L.C. The Trailer Park included 56 spaces for trailers. On June 30, 2011, Mr. Elston signed a timeline established by the City of Fairfield for the cleanup of the Trailer Park. The activities included the removal of tires, trash, structures, and other debris. The cleanup activities were to be completed between July 31, 2011 and September 30, 2011.

2. On September 26, 2011, DNR Field Office 6 received a complaint regarding opening burning and improper solid waste disposal that was occurring at property located at 2176 110th Street, Richland, Iowa (Property). The Property is owned by Ned and Holly Jeffrey.

3. On October 12, 2011, Jim Kacer, DNR Field Office 6 environmental specialist, investigated the complaint at the Property. Mr. Kacer observed a large pile of solid waste (Debris Pile) east of an unoccupied house on the Property. The Debris Pile included insulation, wood, cardboard, plastic, furniture, mattresses, clothing, and other solid waste. Mr. Kacer did not see evidence of open burning.

4. On October 12, 2011, a Notice of Violation letter was issued to Mr. Jeffrey for the improper disposal of solid waste on the Property. The letter explained the solid waste regulations and required that the solid waste be disposed of at a permitted landfill within 30 days. The letter stated that the material must not be burned. On October 21, 2011, the Notice of Violation letter was reissued to Ned and Hollis Jeffrey for the improper solid waste disposal.

5. On October 22, 2011, prior to receiving the October 21 Notice of Violation letter, Hollis Jeffrey signed a document as the landowner allowing The Earthman, L.C. to burn the Debris Pile on the Property.

6. On October 23, 2011, DNR Field Office 6 received a call on the spill line about a fire at the Property. On October 24, 2011, Bert Noll, DNR Field Office 6 environmental specialist, spoke to the complainant who stated that the material that

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was burned included tires, televisions, paint cans, insulation, and batteries. The complainant stated that the waste came from the Trailer Park and that Mr. Elston was the person hired to clean up the Trailer Park. The complainant stated that Mr. Elston may have taken some of the demolition debris in the Debris Pile from the trailers in the Trailer Park to the Property.

7. On October 25, 2011, Mr. Kacer spoke to the Jefferson County Sheriff's Deputy who had been called to the fire. The Sheriff's Office stated that Mr. Elston had called the fire in as a controlled burn, but later called for assistance when the fire got out of control and spread to a shed on the Property. The Richland Fire Department responded to Mr. Elston's second call. Mr. Elston provided a copy of the letter to the Sheriff's Office from Ms. Jeffrey that gave him permission to burn the Debris Pile on the Property.

8. On October 27, 2011, Bert Noll and Brian Lee, DNR Field Office 6 environmental specialists, visited the Property. They noted that the Debris Pile had been burned, and took photographs of the area.

9. On October 28, 2011, Mr. Kacer and Kurt Levetzow, DNR Field Office 6 environmental specialist senior, visited the Property and took more photographs of the demolition debris remaining after the fire. They also visited the Trailer Park, and observed partially demolished mobile homes as well as piles of debris. They took photographs of the Trailer Park. They contacted Mr. Elston by telephone. He stated he was out of town, but that he would stop at the field office to discuss the situation when he returned.

10. On October 31, 2011, Mr. Elston came to DNR Field Office 6 and spoke to Mr. Kacer and Mr. Levetzow. Mr. Elston did not deny bringing wood from the Trailer Park to the Property. Mr. Elston stated he had permission from the landowner to burn the Debris Pile. Mr. Levetzow and Mr. Kacer explained the asbestos, open burning, and solid waste regulations to Mr. Elston. Mr. Elston stated that he would stop demolishing the trailers until they had been inspected for asbestos. Mr. Elston also stated that Ms. Jeffrey would not allow him to remove the remnants of the Debris Pile from the Property since the fire was being investigated for insurance purposes.

11. On November 2, 2011, Mr. Kacer spoke to Ms. Jeffrey. Ms. Jeffrey stated that she received the Notice of Violation letter after she had given Mr. Elston permission to burn the Debris Pile on the Property. In addition, Ms. Jeffrey said that, in a conversation prior to receiving the October 21, 2011 Notice of Violation letter, Mr. Elston had told her the burning was allowed. She stated she was not allowing Mr. Elston on the Property until his insurance company had completed its investigation of the fire.

12. On November 10, 2011, Mr. Elston was issued a Notice of Violation letter for the asbestos, open burning, and solid waste violations. The letter required

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the remaining debris to be removed from the Property within 30 days of receipt of the letter. The letter also indicated that the matter was being referred for possible further enforcement. A Notice of Violation letter was also sent to Ms. Jeffrey on the same day for the violations.

13. On December 5, 2011, Mr. Elston's insurance company contacted DNR Field Office 6 requesting an extension for the cleanup of the Property. An extension was given for the cleanup to be completed by January 15, 2012.

14. On December 14, 2011, Mr. Elston stopped at DNR Field Office 6, and provided a copy of the letter from Ms. Jeffrey that had given him permission to burn the Debris Pile on the Property.

15. In the fall of 2013, Mr. Elston completed the cleanup of the Property, and provided the landfill receipts to the DNR.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Elston burned a pile of debris from the Horseshoe Court Trailer Park at property owned by Ms. Jeffrey. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the trailers at the Horseshoe Court Trailer Park. The above facts indicate violations of this provision.

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5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the trailers. The above facts indicate a violation of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Debris from the Horseshoe Court Trailer Park was burned at the Jeffrey's property rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Millard Elston and The Earthman, L.C. agree to do the following:

1. Millard Elston and The Earthman, L.C. shall pay a penalty of \$2,000.00 in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

\$174.00 due February 15, 2014	\$166.00 due August 15, 2014
\$166.00 due March 15, 2014	\$166.00 due September 15, 2014
\$166.00 due April 15, 2014	\$166.00 due October 15, 2014
\$166.00 due May 15, 2014	\$166.00 due November 15, 2014
\$166.00 due June 15, 2014	\$166.00 due December 15, 2014
\$166.00 due July 15, 2014	\$166.00 due January 15, 2015

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for

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assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$2,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of trailers and other associated solid waste has allowed Mr. Elston to save time and money. Additionally, Mr. Elston was able to avoid landfill costs by burning the debris rather than taking it to the landfill. The DNR was unable to verify how many trailers were taken down by Mr. Elston and if he disposed of other solid waste from the trailer court through burning; therefore the estimated economic benefit realized by Mr. Elston is a very conservative \$250.00. That amount is assessed for economic benefit.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has possibly caused asbestos fibers to be released into the air through the demolition. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. \$1,000.00 is assessed for gravity of violation.

Culpability – Mr. Elston has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Open burning and solid waste rules have been in place for more than 20 years. Based on the above considerations, \$750.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Elston and The Earthman, L.C. For that reason Mr. Elston and the Earthman, L.C. waive the right to appeal this administrative order or any part thereof.


VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 10th day of
February, 2014.



MILLARD ELSTON III/THE EARTHMAN, L.C.

Dated this 31 day of
January, 2014.

AQB (Con 10-6 Jefferson County); Kelli Book; Field Office 6; EPA; VI.C, VII.C.1, and VII.C.4